

1 Samuel Watkins, Esq. (CSB 272162)
Email: swatkins@tocounsel.com
2 THEODORA ORINGHER PC
10880 Wilshire Blvd., Suite 1700
Los Angeles, CA 90024-4101
3 Telephone: (310) 557-2009

4 Brice E. Bryan (State Bar No. 179584)
Email: goodguyesq@aol.com
5 Christopher J. Brantingham (State Bar No. 261782)
Email: zuluchris@aol.com
6 BRICE E. BRYAN & ASSOCIATES
23945 Calabasas Road, Suite 113A
7 Calabasas, CA 91302
Telephone: (818) 223-8090

8 Attorneys for Defendants Uniqoptics, LLC
9 And David Zarraonandia

10 Gregory L. Weeks, Esq., (CSB No. 58584)
Email: gweeks@wknjlaw.com
11 Gregory K. Nelson, Esq. (CSB No. 203029)
Email: gnelson@wknjlaw.com
12 Chandler G. Weeks, Esq. (CSB No. 245503)
Email: chandlerw@wknjlaw.com
13 WEEKS, KAUFMAN, NELSON & JOHNSON
462 Stevens Avenue, Suite 310
14 Solana Beach, CA 92075
Telephone: (858) 794-2140

15 Attorneys for Plaintiff, Red.com, Inc.
16

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA**

19 RED.COM, INC. dba RED DIGITAL
CAMERA, a Washington corporation,
20 Plaintiff,

vs.

21 UNIQOPTICS, LLC, a California
Limited Liability Company and DAVID
22 ZARRAONANDIA, an individual,

23 Defendants.

Case No. CV 11-03611 VBF (JEMx)

**[PLAINTIFF'S PROPOSED]
PROTECTIVE ORDER**

[DISCOVERY MATTER]

24 **GOOD CAUSE STATEMENT**

25 This is an action for false advertising and unfair competition. Both the
26 plaintiff and the defendant are designers, manufacturers and/or distributors of digital
27 cinema camera lenses. The documents that would be the subject of discovery in this
28

1 case will be comprised primarily of commercially sensitive internal documents of
 2 each party which, in the ordinary course of their respective businesses, each party
 3 would guard and treat as confidential such as sourcing data, manufacturing data,
 4 cost information, wholesale pricing figures, technical designs, customer names,
 5 customer buying trends and other competitive information contained in purchase
 6 invoices, wholesales invoices, related commercial documents and communications
 7 and internal distribution and marketing documents. Moreover, it is anticipated that
 8 discovery may call for the disclosure of internal development documents and
 9 business strategies by either or both parties, as well as the source of manufacturing
 10 from either or both parties. All of such documents are of the type that either party
 11 would not, for legitimate business reasons, disclose to the other. Unless such
 12 documents can be limited to “ATTORNEYS EYES ONLY,” the receiving party
 13 would obtain access to highly sensitive pricing information, sourcing information,
 14 customer names, customer buying trends and the like.

15 **I. DEFINITIONS**

16 1. As used in this Protective Order,

17 a. “Designating Party” means any Person who designates Material
 18 as Confidential Material.

19 b. “Discovering Counsel” means counsel of record for a
 20 Discovering Party.

21 c. “Discovering Party” means the Party to whom Material is being
 22 Provided by a Producing Party.

23 d. “Confidential Material” means any material designated as
 24 CONFIDENTIAL or, where appropriate, ATTORNEYS’ EYES ONLY, in
 25 accordance with the terms of this Protective Order.

26 e. “Material” means any document, testimony or information in any
 27 form or medium whatsoever, including, without limitation, any written or printed
 28

1 matter, provided in this action by a Party before or after the date of this Protective
2 Order.

3 f. "Party" means either one of the Parties to this action, their
4 attorneys of record and their agents.

5 g. "Person" means any individual, corporation, partnership,
6 unincorporated association, governmental agency, or other business or governmental
7 entity whether a Party or not.

8 h. "Producing Party" means any Person who Provides Material
9 during the course of this action.

10 i. "Provide" means to produce any Material, whether voluntarily or
11 involuntarily, whether pursuant to request or process.

12 **II. CONFIDENTIAL DESIGNATION**

13 2. A Producing Party may designate as "CONFIDENTIAL" any material
14 Provided to a Party that contains or discloses any of the following:

15 a. Non-public insider information, designs, business strategies,
16 manufacturing documents, customer or vendor identity or lists, purchasing
17 information, personnel files, financial information, trade secrets, confidential
18 commercial information, proprietary information, or other confidential or sensitive
19 information which the Producing Party determines in good faith should be kept
20 confidential; and

21 b. Information that the Party is under a duty to preserve as
22 confidential under an agreement with or other obligation to another Person.

23 c. A Producing Party may designate as "ATTORNEYS' EYES
24 ONLY" any material Provided to a Party that contains or discloses information
25 which, in good faith, is believed to be of an extremely high degree of commercial
26 sensitivity and/or would provide a competitive advantage to its competitors if
27 disclosed.

1 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'
2 EYES ONLY Materials that the Producing Party in good faith believes are entitled
3 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A
4 Producing Party may designate Confidential Material for protection under this order
5 by physically marking it with one of the following inscriptions prior to Providing it
6 to a Party: CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER or
7 ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER.

8 4. All costs associated with the designations of materials as
9 CONFIDENTIAL or ATTORNEYS' EYES ONLY involving, for example, the cost
10 of binding confidential portions of deposition transcripts, shall be borne by the Party
11 making the designation.

12 **III. RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

13 5. Confidential Material designated as CONFIDENTIAL shall not be
14 disclosed, nor shall its contents be disclosed, to any person other than those
15 described in Paragraph 8 of this Protective Order and other than in accordance with
16 the terms, conditions and restrictions of this Protective Order. Confidential Material
17 designated as ATTORNEYS' EYES ONLY shall not be disclosed, nor shall its
18 contents be disclosed to any person other than those described in Paragraph 9 of this
19 Protective Order.

20 6. Confidential Material Provided by a Producing Party to a Discovering
21 Party shall not be used by the Discovering Party or anyone other than the Producing
22 Party, specifically including the persons identified in Paragraphs 8 or 9 as
23 appropriate, for any purpose, including, without limitation any personal, business,
24 governmental, commercial, publicity, public-relations, or litigation (administrative
25 or judicial) purpose, other than the prosecution or defense of this action.

26 7. All Confidential Material shall be kept secure by Discovering Counsel
27 and access to Confidential Material shall be limited to persons authorized pursuant
28

1 to Paragraphs 8 or 9 of this Protective Order.

2 8. For purposes of the preparation of this action, and subject to the terms,
3 conditions, and restrictions of this Protective Order, Discovering Counsel may
4 disclose Material designated as CONFIDENTIAL and the contents of Material
5 designated as CONFIDENTIAL only to the following persons:

6 a. Counsel of record working on this action on behalf of any party
7 and counsel's employees who are directly participating in this action, including
8 counsel's partners, associates, paralegals, assistants, secretaries, and clerical staff.

9 b. In-house counsel and such in-house counsel's employees who
10 are directly participating in this action, including counsel's paralegals, assistants,
11 secretaries, and clerical staff.

12 c. Court and deposition reporters and their staff.

13 d. The Court and any Person employed by the Court whose duties
14 require access to Material designated as CONFIDENTIAL.

15 e. Witnesses at depositions or pre-trial proceedings.

16 f. Non-party mediators, experts and consultants assisting counsel
17 with respect to this action and their secretarial, technical and clerical employees who
18 are actively assisting in the settlement or preparation of this action, provided that the
19 identity of any expert or consultant, or their assistants or employees, is provided to
20 the Designating Party or its counsel at least ten (10) days prior to such disclosure so
21 that the Designating Party may have the opportunity to oppose the disclosure by
22 filing a protective order or other means.

23 g. Officers, directors and employees of the Parties hereto who have
24 a need to review Material designated as CONFIDENTIAL to assist in connection
25 with this litigation, subject to the limitations set forth herein;

26 h. Photocopy service personnel who photocopied or assisted in the
27 photocopying or delivering of documents in this litigation;
28

1 i. Any Person identified on the face of any such Material
2 designated as CONFIDENTIAL as an author or recipient thereof;

3 j. Any Person who is determined to have been an author and/or
4 previous recipient of the Material designated as CONFIDENTIAL, but is not
5 identified on the face thereof, provided there is evidence of actual authorship or
6 receipt of the Material designated as CONFIDENTIAL by such Person; and

7 k. Any Person who the Parties agree in writing may receive
8 Material designated as CONFIDENTIAL.

9 The Parties shall make a good faith effort to limit dissemination of Material
10 designated as CONFIDENTIAL within these categories to Persons who have a
11 reasonable need for access thereto.

12 9. For purposes of the preparation of this action, and subject to the terms,
13 conditions, and restrictions of this Protective Order, Discovering Counsel may
14 disclose Material designated as ATTORNEYS' EYES ONLY, and the contents of
15 Material so designated, only to the following persons:

16 a. Counsel of record for the Parties to this action and counsel's
17 employees who are directly participating in this action, including counsel's partners,
18 associates, paralegals, assistants, secretarial, and clerical staff.

19 b. Court and deposition reporters and their staff.

20 c. The Court and any person employed by the Court whose duties
21 require access to Material designated as ATTORNEYS' EYES ONLY.

22 d. Witnesses at depositions or pre-trial proceedings, in accordance
23 with procedures set forth in paragraph 10.

24 e. Experts and consultants assisting counsel with respect to this
25 action and their secretarial, technical and clerical employees who are actively
26 assisting in the preparation of this action, in accordance with the procedures set forth
27 in paragraph 10, and, provided that the identity of any expert or consultant, or their
28

1 assistants or employees, is provided to the Designating Party or its counsel at least
2 ten (10) days prior to such disclosure so that the Designating Party may have the
3 opportunity to oppose the disclosure by filing a protective order or other means..

4 f. Any Person identified on the face of any such Material
5 designated as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

6 g. Any Person who is determined to have been an author and/or
7 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but
8 is not identified on the face thereof, provided there is evidence of actual authorship
9 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such
10 Person; and

11 h. Any Person who the Parties agree in writing may receive
12 Material designated as ATTORNEYS' EYES ONLY.

13 **IV. UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

14 10. Before Discovering Counsel may disclose Confidential Material to any
15 Person described in subparagraphs 8(b), 8(e), 8(f), 8(g), 9(d) and 9(e) above, the
16 Person to whom disclosure is to be made shall receive a copy of this Protective
17 Order and shall evidence his or her agreement to be bound by the terms, conditions,
18 and restrictions of the Protective Order by signing an undertaking in the form
19 attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the copy of this
20 Protective Order, with a copy of his or her signed Undertaking attached.
21 Discovering Counsel shall keep a copy of the signed Undertaking for each person
22 described in subparagraphs 9(d) and (e) to whom Discovering Counsel discloses
23 Confidential Material.

24 11. The individuals designated in subparagraph 9(a) above, are specifically
25 prohibited from publishing, releasing, or otherwise disclosing Material designated as
26 ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers, or
27 employees of the company for which the individual is employed, including any in-
28

1 house counsel or their staff, or to any other persons not authorized under this
2 Protective Order to receive such information. The designated individuals in
3 subparagraph 9(a) shall retain all ATTORNEYS' EYES ONLY material in a secure
4 manner under separate and confidential file, so as to avoid inadvertent access by, or
5 disclosure to, unauthorized persons.

6 **V DEPOSITIONS**

7 12. Those portions of depositions taken by any Party at which any Material
8 designated as CONFIDENTIAL is used or inquired into, may not be conducted in
9 the presence of any Person(s) other than (a) the deposition witness, (b) his or her
10 counsel, and (c) Persons authorized under Paragraph 8 of this Protective Order to
11 view such Confidential Material. During those portions of depositions in which
12 Material designated ATTORNEYS' EYES ONLY is used or inquired into, only
13 those persons authorized under Paragraph 9 to view such Materials may be present.

14 13. Counsel for any deponent may designate testimony or exhibits as
15 Confidential Material by indicating on the record at the deposition those portions of
16 the testimony of the deponent or any exhibits to his or her testimony that are to be
17 treated as Confidential Material. If an exhibit or document has previously been
18 marked as Confidential Material, it shall continue to be treated as so both during and
19 after the deposition, pursuant to the terms of this order. Counsel for any Party may
20 designate exhibits in which that Party has a cognizable interest as Confidential
21 Material by indicating on the record at the deposition that such exhibit(s) are to be
22 treated as Confidential Material. Failure of counsel to designate testimony or
23 exhibits as confidential at deposition, however, shall not constitute a waiver of the
24 protected status of the testimony or exhibits. Within thirty (30) calendar days of
25 receipt of the transcript of the deposition, or thirty (30) calendar days of the date on
26 which this Protective Order becomes effective, whichever occurs last, counsel shall
27 be entitled to designate specific testimony or exhibits as Confidential Material. If
28

1 counsel for the deponent or Party fails to designate the transcript or exhibits as
2 Confidential within the above-described thirty (30) day period, any other Party shall
3 be entitled to treat the transcript or exhibits as non-confidential material. For
4 purposes of this Paragraph 13, this Protective Order shall be deemed "effective" on
5 the date on which it has been executed by all counsel for the Parties.

6 14. When Material disclosed during a deposition is designated Confidential
7 Material at the time testimony is given, the reporter shall separately transcribe those
8 portions of the testimony so designated, shall mark the face of the transcript in
9 accordance with Paragraph 3 above, and shall maintain that portion of the transcript
10 or exhibits in separate files marked to designate the confidentiality of their contents.
11 The reporter shall not file or lodge with the Court any Confidential Material without
12 obtaining written consent from the Party who designated the Material as
13 Confidential Material. For convenience, if a deposition transcript or exhibit
14 contains repeated references to Confidential Material which cannot conveniently be
15 segregated from non-confidential material, the Parties may agree at that time that the
16 entire transcript or exhibit be maintained by the reporter as Confidential Material.

17 **VI USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER**
18 **COURT PAPERS**

19 15. The designation of Material as CONFIDENTIAL or ATTORNEYS'
20 EYES ONLY does not automatically authorize a Party to file such Material under
21 seal. An application, including any stipulated application to file documents under
22 seal, must comply with Local Rule 79-5. Any document (including the motion
23 papers themselves) submitted to the Court that reveals any Confidential Material
24 shall be filed under seal, labeled as follows: "This Document Is Subject to a
25 Protective Order Issued by the Court and May Not Be Examined or Copied Except
26 in Compliance with that Order." Documents so labeled shall be kept by the Clerk
27 under seal and shall be made available only to the Court or persons authorized by
28

1 the terms of this Order to have access thereto. Any documents the Court orders
2 submitted under seal shall be filed and handled in the same manner as Confidential
3 Material filed in connection with discovery motions or proceedings.

4 **VII. OBJECTIONS TO DESIGNATION**

5 16. Any disputes regarding the designation of documents as Confidential
6 Material shall be governed by Local Rules 37-1 and 37-2. Any Party may at any
7 time notify the Designating Party in writing of its contention that specified Material
8 designated as Confidential Material is not properly so designated because such
9 Material does not warrant protection under applicable law. The Designating Party
10 shall, within ten (10) court days, meet and confer in good faith with the Party
11 challenging the designation in an attempt to resolve such dispute. If the dispute is
12 not resolved in the meet and confer conference, the Discovering Party shall then
13 have ten (10) calendar days from the initial meet and confer to send to counsel for
14 Designating Party its portion of a joint stipulation regarding the designation of any
15 disputed documents, together with all declarations and exhibits offered in support of
16 its position. Within seven (7) calendar days of receipt of the joint stipulation and
17 supporting papers from Discovering Party, the Designating Party shall deliver to
18 counsel for Discovery Party its own portion of the joint stipulation regarding the
19 designation of any disputed documents, together with all declarations and exhibits
20 offered in opposition. After receipt of the Designating Party's portion and
21 opposition documents, counsel for Discovering Party shall file the joint stipulation
22 and all supporting and opposing documents within one (1) calendar day of receipt.
23 Within fourteen (14) days of the filing of the joint stipulation, both the Designating
24 and Discovering Party may file a supplemental brief, as set forth in Local Rule 37-
25 2.3. At the Court's discretion and invitation, any such motion shall be set for
26 hearing on the first available calendar date. Until a ruling on the challenged
27 designation is received, all Parties may treat the Material as non-confidential.
28

1 Pending resolution of any motion filed pursuant to this Paragraph 16, all Persons
2 bound by this Protective Order shall continue to treat the Material which is the
3 subject of the motion as Confidential Material.

4 17. Any discovery disputes concerning the designation of materials or
5 disclosure of documents or information under this Protective Order shall be brought
6 in compliance with Local Rule 37.

7 **VIII. RETURN OF MATERIAL**

8 18. Within forty-five (45) calendar days after the final settlement or
9 termination of this action, Discovering Counsel shall return or destroy (at the option
10 and expense of Discovering Counsel) all Confidential Materials provided by a
11 Producing Party and all copies thereof. The obligation of this Protective Order shall
12 survive the termination of this action. Upon request, counsel for each Party shall
13 verify in writing that they have complied with the provisions of this paragraph.

14 **IX. SCOPE OF THIS ORDER**

15 19. Except for the provisions regarding post-trial or post-settlement return
16 and destruction of Confidential Material, or segregation of work product which
17 embodies Confidential Material, this order is strictly a pretrial order; it does not
18 govern the trial in this action.

19 20. Not later than seven (7) days before trial in the action, Counsel agree to
20 meet and confer concerning the use at trial of Confidential Material.

21 21. Nothing in this Protective Order shall be deemed to limit, prejudice, or
22 waive any right of any Party or Person (a) to resist or compel discovery with respect
23 to, or to seek to obtain additional or different protection for, Material claimed to be
24 protected work product or privileged under California or federal law, Material as to
25 which the Producing Party claims a legal obligation not to disclose, or Material not
26 required to be provided pursuant to California law; (b) to seek to modify or obtain
27 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
28

1 admissibility at trial or otherwise of any Material, whether or not designated in
2 whole or in part as Confidential Material governed by this Protective Order; or (d)
3 otherwise to require that discovery be conducted according to governing laws and
4 rules.

5 22. Designation of Material as Confidential Material on the face of such
6 Material shall have no effect on the authenticity or admissibility of such Material at
7 trial.

8 23. This Protective Order shall not preclude any Person from waiving the
9 applicability of this Protective Order with respect to any Confidential Material
10 Provided by that Person or using any Confidential Material Provided by that Person
11 or using any Confidential Material owned by that Person in any manner that Person
12 deems appropriate.

13 24. This Protective Order shall not affect any contractual, statutory or other
14 legal obligation or the rights of any Party or Person with respect to Confidential
15 Material designated by that Party.

16 25. The restrictions set out in the Protective Order shall not apply to any
17 Material which:

- 18 a. At the time it is Provided is available to the public;
19 b. After it is Provided, becomes available to the public through no
20 act, or failure to act, of the Discovering Party; or
21 c. The Discovering Party can show
22 i. Was already known to the Discovering Party
23 independently of receipt of the Confidential Material in this or prior litigation; or
24 ii. Was received by the Discovering Party, after the time it
25 was designated as Confidential Material hereunder, from a third party having the
26 right to make such disclosure.

27 26. If at any time any Material protected by this Protective Order is
28

1 subpoenaed from the Discovering Party by any Court, administrative or legislative
 2 body, or is requested by any other Person or entity purporting to have authority to
 3 require the production of such material, the Party to whom the subpoena or other
 4 request is directed shall immediately give written notice thereof to the Producing
 5 Party with respect to Confidential Material sought and shall afford the Producing
 6 Party reasonable opportunity to pursue formal objections to such disclosures. If the
 7 Producing Party does not prevail on its objections to such disclosure, the
 8 Discovering Party may produce the Confidential Material without violating this
 9 Protective Order.

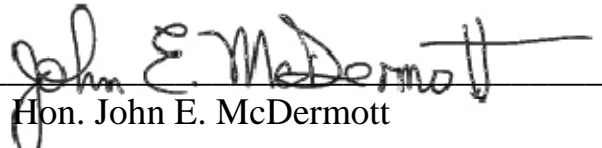
10 **X. SUBMISSION TO COURT**

11 27. The Parties agree to submit this Protective Order to the Court for
 12 adoption as an order of the Court. The Parties reserve the right to seek, upon good
 13 cause, modification of this Protective Order by the Court.

14 IT IS SO ORDERED.

15 DATED: August 26, 2011

16 By:

17 
 18 Hon. John E. McDermott
 19 United States Magistrate Court Judge

20 Respectfully submitted,

21 Date: August 23, 2011

22 WEEKS, KAUFMAN, NELSON & JOHNSON

23 By: /S/-Chandler G. Weeks

24 Chandler G. Weeks
 25 Attorney for Plaintiff
 26
 27
 28

